

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void, NMC 222866, NMC 222867.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where a notice of intention to hold or evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The filing of a quitclaim deed relating to a mining claim does not, standing alone, constitute a notice of intention to hold the mining claim. Such a deed merely evidences present ownership, not an intention to hold in the future.

APPEARANCES: William E. Fitzgerald, Esq., Glens Falls, New York, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

George McGowan has appealed a decision dated July 22, 1988, issued by the Nevada State Office, Bureau of Land Management (BLM), declaring two unpatented mining claims, Kelly 1 and 2, NMC 222866 and NMC 222867,

abandoned and void because an affidavit of assessment work or notice of intention to hold was not received by BLM for the filing period ending December 30, 1987.

In the statement of reasons for appeal, McGowan encloses a copy of a quitclaim deed, dated December 1987, transferring title in the subject claims to him. The deed was recorded in the Office of the Recorder of Clark County, Nevada, on December 28, 1987. Notice of the transfer of title and a copy of the quitclaim deed were filed with BLM on December 30, 1987. McGowan contends that the transfer of title and recording of the deed in December 1987 constituted a new location of the claim, and that pursuant to 43 CFR 3833.2-1(d), he had through December 30, 1988, to file either a notice of intent to hold the claim or evidence of annual assessment work.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4. Because the record does not indicate that evidence of assessment work performed or notice of intention to hold was filed for these claims with BLM on or before December 30, 1987, BLM properly deemed the claims to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Thomas Stoelting, 70 IBLA 231 (1983).

The quitclaim deed filed by appellant with the local recording office in Nevada does not constitute a proper recordation of location certificate because it does not comply with the requirements for such under Nevada law. See Nevada Revised Statutes, section 517.050.

Further, there is no merit to appellant's argument that the filing of the quitclaim deed constituted a new location of the claim, triggering a new full year to satisfy the recordation requirements of FLPMA. Through the quitclaim deed, appellant merely acquired the same interests of the prior owner and when a proof of labor for 1987 was not filed, the claims were extinguished.

Nor can the quitclaim deed filed with BLM on December 30 be considered a notice of intention to hold under the provisions of 43 CFR 3833.2-3. Foremost, appellant does not even raise this contention. Thus, the only intention to be deduced from the filing of the quitclaim deed with BLM is the desire of the transferee to fulfill his obligation to provide BLM with "notice of transfer of interest." 43 CFR 3833.3. In any event, a quitclaim

deed, standing alone, merely evidences "present ownership," not an intention to hold in the future.

According, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton  
Chief Administrative Judge

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I concur:

Gail M. Frazier  
Administrative Judge